

THE
CORDIAL

OF

JVDGE JENKINS,

For the good People of LONDON;
In Reply to a thing, called,

AN

Answer to the Poysonous Seditious
Paper of Mr. *David Jenkins*; By *H. P. Bar-*
rester of Lincolnes-Inne.



Printed in the Yeare, 1647.

CORRIGENDUM

IN THE

OF THE

AND

TO THE

OF THE

IN THE YEAR 1847.



The Cordial of *Judge Fenkins* for the good People of London, &c.

AFrer the said Mr. *H. P.* hath made a recitall of the Heads of my *Vindication*, hee deduceth his Answer unto these eight Particulars, which follow *verbatim*.

1.

It cannot be denyed, but the Parliament sits by the Kings Writ, nay if Statute Law be greater then the Kings Writ, it cannot be denyed but the Parliament sits or ought to sit by something greater then the Kings Writ; And, if it be confessed that the Parliament sits by the Kings Writ, but does not Act by the Kings Writ, then it must follow that the Parliament is a void vaine Court, and sits to no purpose; nay it must also follow, that the Parliament is of lesse authority, and of lesse use then any other inferior Court; forasmuch as it is not in the Kings power to controule other Courts, or to prevent them from sitting or Acting.

2.

This is a grosse non sequitur, the Kings power is in himselfe; Ergo it is not derived to, nor does reside virtually in the Parliament. For the light of the Sun remains imbodyed, and unexhausted in the Globe of the Sun, at the same time as

it is diffused and displayed through all the body of the ayre, and who sees not that the King without emptying himselfe, gives commissions daily of Oier and Terminer to others, which yet he himselfe can neither frustrate nor elude? but for my part I conceive it is a great error to inferre that the Parliament has onely the Kings power, because it has the Kings power in it: for it seems to mee, that the Parliament does both sit and act by concurrent power, devolved both from the King and Kingdome; And this in somethings is more obvious and apparent then in others. For by what power does the Parliament grant Subsidies to the King? if onely by the power which the King gives, then the King may take Subsidies without any grant from the Parliament: and if it be so by a power which the people give to the Parliament; Then it will follow that the Parliament has a power given both by King and Kingdome.

The sending Propositions to the King, and desiring his concurrence, is scarce worth an Answer, for Subjects may humbly petition for that which is their strict right and property. Nay it may sometimes beseech a superiour to preferre a suite to an inferiour for matters in themselves due. God himselfe has not utterly disdained to beseech his owne miserable impious unworthy creatures: besides, tis not our Tonet, that the King has no power, because he has not all power, nor that the King cannot at all promote our happinesse, because hee has no just claime to procure our ruine.

We affirme not, that the Kings power is separated from his Person, so as the two Spencers affirmed, neither doe we frame conclusions out of that separation, as the two Spencers did, either that the King may be removed for misdemeanours, or reformed per aspertem; or that the Subject is bound to govern in ayde of him; wee onely say, that his power is distinguishable from his person, and when he himselfe makes a distinction be-

betwixt them, commanding one thing by his Legall Writs, Courts, and Officers, and commanding another thing extrajudicially by word of mouth, Letters, or Ministers, we are to obey his power rather then his person.

5.

We take not from the King all power of pardoning Delinquents, we onely say it is not proper to him *quarto modo*: For if the King pardon him which hath murdered my sonne, his pardon shall not cut me off from my appeale; and 'tis more unreasonable, that the Kings pardon should make a whole State, which hath suffered remedlesse, then any private man. So if the King should denie indemnitie to those which in the furie of Warre have done things unjustifiable by the Lawes of Peace, and thereby keepe the wounds of the State from being bound up, 'tis equitable that an Act of Indemnitie should be made forcible another way. And if this will not hold, yet this is no good consequence the King is absolute in point of pardons, therefore he is absolute in all things else; and the Parliament hath no power to discharge Delinquencies, therefore it hath no power in other matters.

6.

The Parliament hath declared the King to be in no condition to governe: but this must not be interpreted rigidly, and without a distinction; for if the King with his sword drawne in his hand, and pursuing the Parliament and their adherents as Rebels, be not fit for all Acts of Government, yet 'tis not hereby insinuated that he is divested of the habit or right of governing: If he be unqualified now, he is not unqualified for the future; if he may not doe things destructive to the Parliament, he is not barred from returning to the Parliament, or doing justice to the Parliament. This is a frivolous cavil, and subterfuge.

7.

We sweare, that the King is our supreme Governour over all persons, and in all Causes; but we doe not sweare that he is above all Law, nor above the safetie of his people, which is the end of the

the Law, and indeed Paramount to the Law it selfe. If he be above all Law, or lyable to no restraint of our Law, then we are no freer then the French or the Turks; and if he be above the prime end of Law, common safetic, then we are not so free as the French or the Turks: For if the totall subversion of the French or the Turke were attempted, they might by Gods Law, imprinted in the Booke of Nature, justifie a self-defence; but we must remedilessly perish, when the King pleases to command our throats. Besides, how atchieved the King of England such a Supremacie above all Law and the communitie it selfe, for whose behoofe Law was made? If Gods donation be pleaded, which is not speciall to him, or different from what other Kings may pretend too, then to what purpose serve our Lawes, nay, to what purpose serve the Lawes of other Countries? for by this generall donation, all Nations are condemned to all servitude as well as we. If the Law of this Land be appealed to, what Bookes hath M. Jenkins read, where hath he found out that *Lex Regia*, whereby the people of England have given away from themselves all right in themselves? Some of our Bookes tell us, that we are more free then the French; that the King cannot oppresse us in our persons, or estates, by imprisonment, denying justice, or laying Taxes without our consents: other Bookes tell us, that the safetic of the people is the supreme Law, and that the King hath both God and the Law for his Superior: But all this is nothing to learned M. Jenkins.

8.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings assent: yet this is still to be denied, that therefore without this assent particularly exprest, the two Houses can doe nothing, nor have any virtuall power at all, no, not to examine M. Jenkins, nor to doe any other thing of like nature, though in order to publike justice and safetic. I have done, and wish M. Jenkins would call in and lick up againe his black infamous execrable reproaches, so filthily vomited out against the Parliament.

To the first.

I Was examined by a Committee appointed by the House of Commons: I say and said that the House of Commons have no power to examine me, for that it is no Court, every Court hath power to examine upon Oath, this power the House of Commons never claimed; The Court of Pie-pinders, Court-Baron, Hundred Court, County Court, and every other Court of Record, or not of Record, hath power to examine upon oath, and an examination without Oath, is a communication onely, examination in Law is upon oath.

5 H. 4. c. 3.
 7 H. 6. 46.
 19 H. 6. 43.
 35 H. 6. 5.

There is no Court without a power of tryall, the House of Commons have no power to try any offence, nor ever practized it by Bill, Inditement, Information, Plaint or Original, to deduce it to tryall, nor to try it by Verdict, Demurrer or Examination of witnesses upon Oath, without which there can be no condemnation or judgement, and that which can attaine to no reasonable end, the Law rejects as a thing inutile and uselesse: *Sapiens incipit a fine.*

Sir Anthony
 Maynes case,
 Cook & pars,
 Reports, Lit.
 2. lib. Sect.
 194. 6 H. 4. 1.

The Writ whereby they are called gives them power *Ad faciendum & consentiendum*, to what to such things *Quae ibidem de communi Consilio ordinari contigerint*, (*viz.*) in the Parliament: This makes nothing at all for a Court for the House of Commons; that *consilium* which that Writ intends, is cleared partly by the Writ for choosing Knights,

4 pars. in fine,
 fol. 41 & 90.

Knights, &c. For the King by that Writ is said to resolve to consult and treat with the Prelates and Peeres of the Kingdome, for and touching the great concernments of the Common-wealth (for the King never sits in the House of Commons;) and this also is made evident by the Writs to the Prelates, Peeres, Judges, and to his Councell at Law; the words in their Writs are, *To appeare and attend the Parliament. consilium impersuri*, the one doth *consilium*, the other *facere & consentire*.

7. H. 6. 28.

1 H. 7. 20.

14. E. 3. ca 5.

4 pars. instit.

pag. 21.

The House of Lords, where the King sits in person, assisted by his Lords, Judges, Serjeants, Attourney, Sollicitor, Masters of the Chancery, is a Court of Record to many purposes, set down in the Bookes of the Law and the Statutes of the Land, and that Court is onely in the House of Lords, where the King sits.

Plowd. Com.

319.

A Court must either be by the Kings Patent, Statute law, or by the Common Law, which is common and constant usage; the House of Commons hath no Patent to be a Court, nor Statute Law to be a Court, nor common usage; they have no Journall Book but since E. 6. time: was there ever Fine by the House of Commons estreated into the Exchequer? For murder or Felony they can imprison no man, much lesse for Treason; that House which cannot doe the lesse, cannot doe the greater.

25. E. 3. c. 4.

3. Car. Petition of Right.

It is ordained, that no man shall be imprisoned or put out of his Franchise by the King or his Councell, but upon Indictment or presentment of his good and lawfull Neighbours, where the deed

deed is done, or by originall Writ at the Common Law, and so is *Lex terra* the Law of the land mentioned in *Magna Charta*, cap. 29. expounded, and the said *Magna Charta*, and *Charta de Foresta*, are declared by the Stat. of 25. E. 1. c. 1. to bee the Common Law of the Land. All Judges and Commissioners are to proceed, *secundum legem & consuetudinem Regni Angliæ*, as appears by all proceedings in all Courts, and by all Commissions: and therefore the House of Commons by themselves, proceeding not by Indictment, Presentment, or Originall Writ, have no power to imprison men, or to put them out of their Franchise.

This no way trenches upon the Parliament, for it is in Law no Parliament without King and both Houses; I have onely in my Paper delivered to Mr. Corbet, applyed my selfe to that Committee, that they had no power to examine me, but I never thought, said, or wrote, that the Parliament had no power to examine me: the Law and custome of this Land is, that a Parliament hath power over my life, liberty, lands and goods, and over every other subject, but the House of Commons of it selfe hath no such power.

For the Lord Cookes relation, that the House of Commons have imposed Fines, and imprisoned men in Queene Elizabeths time, and since; Few facts of late time never questioned, make no legall power nor Court, *à facto ad jus* is no good argument, for the words of the Statute of 6. H. 8. c. 16. that a licence to depart from the House of Com-

4 pars, Instit.

pag. 1.

3 Pars, Instit.

p. 23.

12 H. 7. 10.

Princes case,

8 Pars, Cook.

1 Pars, Instit.

p. 19.

1, H. 8. 3.

Dier, 38. H. 8.

60

1 Pars, Instit.

p. 19. b.

4 Pa. Instit.

ca Parl.

mons for any Member thereof is to be entred of Record in the Booke of the Clarke of the Parliament, appointed, or to be appointed for that House, doth not conclude that the House of Commons is a Court of Record.

For first, that Law of 6. H. 8. c. 26. handles no such question, as that, whether the House of Commons be a Court, it is a maxime in all Lawes, *Lex aliud tractans nil probat*, the word (*Record*) there mentioned, is onely a memoriall of what was done and entred in a Booke: A Plaint removed out of the County-Court to the Court of the Common-Pleas, hath these words in the Writ of remove, *Recordari facias loquelam*, &c. and yet the County-Court is no Court of Record, and so for ancient Demesne, in a Writ of false judgement, the words are *Recordari facias loquelam*, &c. and yet the Court of ancient Demesne is no Court of Record; and so of a Court Baron, the Law and custome of *England* must be preserved, or *England* will bee destroyed, and have neither Law nor custome.

Let any man shew me, that the Court of Lords, or the House of Commons in any age hath made any man a Delinquent (*Rege dissentiente*) the King contradicting it under his Great Seale. Sir *Giles Mompeyson*, *Michell*; and others of late were condemned by the prosecution of the House of Commons in King *James* his time; did King *James* ever contradict it? And so of ancient times, where the House of Peeres condemned the Lord *Latimer* in 50. E. 3. the Kings pardon freed him: which shewes

Fitzh. Nat.
Br. 70.

Fitzh. Nat.
Br. 13.
11 H. 4. 22.
34 H. 6. 49.

4 Pars. Instit.
Tit. Parliam.
pag. 23.

shewes cleerly, that the Kings expresse or implied assent must of necessity be had to make a Delinquent.

The Gentleman saith, *That the Parliament sits, or ought to sit by something greater then the Kings Writ, &c.*

No Parliament did ever sit without the Kings Writ, nor could ever Parliament begin without the Kings presence in person, or by a Guardian of *England* by patent under the Kings Great Seale, the King being *in remotis*, or by Commission under the Great Seale to certaine Lords representing the Kings person, and hath beene thus in all Ages unto this Session of Parliament, wherein his Majesty hath been pressed, and hath passed two Acts of Parliament, one for a Triennall parliament, and another for a perpetuall, if the Houses please, to satisfie their desires; how these two Acts agree one with another, and with the Statute in *E. the third* time, where Parliaments are ordained to be holden every yeare, and what mischiefs to the people of this Land such length of Parliaments will produce by protections and priviledges to free them and their meniall servants from all debts during their lives, if they please to continue it so long, and how destructive to mens actions against them, by reason of the Statute of Limitations, which confines their actions to certaine yeares, and many other inconveniencies of greater importance, is easie to understand?

How can any man affirme, that the two Houses doe act now by the Kings Writ, which relates to

4 Pars, Instit.
pag. 4. & 6.

4 E. 3. c. 14.
36 E. 3. c. 10.
21 Jac the Act
of Limitation
of Actions,
cap. 20.

counsell and Treaty with the King, concerning the King, the defence of his Kingdome, and of the Church of *England*, these are the three points which it tends to, as appears by the Writ. They keep their King prisoner at *Holnby*, and will not suffer him to consult and treat with them. They have made a Vow and Covenant to assist the Forces raised and continued by both Houses against the Forces raised by the King without their consent, and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the Kings Kingdome or their kingdome?

When by their solemne League and Covenant they extirpate Bishops, Deanes and Chapters root and branch, is this to defend the Church of *England*? (that Church must necessarily be meant, that was the Church of *England* when the said Writ bore test) they were not summoned to defend a Church that was not in being; to destroy and defend the Church are very contrary things, the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, *The King cannot controle other Courts of Justice, or prevent them from sitting or ading, and therefore not the two Houses, &c.* It is true, the King cannot controle or prevent his other Courts, for that they are his ordinary Courts of common Justice, to administer common right unto all men, according to the fixed Lawes. The Houses make no Court without the King; they are no body corporate without the King, nor Parliament without the King, they all
make

4 Pars, Instit.
p. 14.

Vow & Cove-
nant, p. 11.

3 Pars, Cook.
Deane and
Chapter of
Norwich.

14 H. 8. 3.
36 H. 8. Dier
cor.

make one corporate body, one Court called the Parliament, whereof the King is the head, and the Court is in the Lords House, where the King is present: and as a man is no man without a head, so the Houses severed frō the King, as now they are, have no power at all, and they themselves by levying war against the King, and imprisoning of him, have made the Stat. for not dissolving, adjourning, or proroging this Parliament of no effect, by the said Acts of their owne; they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat, and reason with them, whereby he may discern what Bills are fit to passe, and what not, which in all Ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they sit to no purpose by their owne disobedience and fault.

¶ Pars, Instit.
p. 1.

For the ordinarie Courts at *Westminster*, the Judges in all those Courts are Judges by the Kings Patent or Writ, otherwise they are no Judges: the Houses can make no Judges, they are no Judges at all who are made by them; the whole and sole power of making Judges, belongs to the King: the King cannot controule or prevent his owne Judges from sitting or acting, but the Houses bee may, for they are not the Kings Judges, but the Judges of the two Houses. In his other Courts, the King commits his power to his Judges by his Patent, and they are sworne to doe common right to all men, and the King is sworne not to let them from so doing: the King cannot judge in those Courts, nor controule; but the King is both
Judge

27 H. 8. c. 24.
28 H. 8. 11.
Diet.

2 R. 3. 11.

Judge and Controller in the Court of Parliament : *Quoad* Acts , for his assent or dissent doth give life or death to all Bills. Many Lawyers have much to answer to God, this Kingdome, and to posteritie, for puzzling the people of this Land with such Fancies, as the Gent. who wrote the Answer to my Paper, and others have published in these Troubles, which hath been none of the least causes of the rayling and continuing of them : And so I have done with the first part of his Answer.

A D. 2.

For the *Non sequitur*, in the second Section of the Gent. Answer, the Antecedent and the Consequent are his owne.

*Quem recitas mem est (ô Fidentine !) libellus :
Sed malè dum recitas incipit esse tuus.*

27 H. 8. c. 24.

My words are, that the King is not virtually in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the King. My Paper hath no such thing, as that the Kings power cannot be derived to others, or the vertue of his power : For his power, and the vertue of his power, is in all Patents to his Judges, in Charters to Corporations, in Commissions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him ; but when they renounce that power, and claime it not from the King,

King, and declare to the Kingdome that he is not in condition to governe, and imprison him, and usurpe to themselves all Royall Authoritie, as the two Houses now doe, no reasonable man can affirme that they act by the power of their prisoner, who hath no power to give them, that by force of Armes take all the power to themselves.

The Gent. sayth, the *King grants Commissions dayly of Oyer and Terminer, which he cannot frustrate nor elude.* The King may revoke and discharge the Commission by his Writ, as he may remove all Judges, and place other men in their roome; and any Kings death determines all the Judges Patents of *Westminster Hall*, Commissions of *Oyer and Terminer*, &c, and so he might dissolve both Houses in all times, by his Writ under the Great Seale, untill that by this Parliament, by his *owne* concession, the King of his goodnesse hath secluded himselfe; which goodnesse hath been full ill requited.

4 E. 4. 39.

5 E. 4. 4.

1 Eliz. Dyer

165.

1 Mar. Brooks
case, 447.

The Gent. affirms, *That the power the Parliament hath, is concurrent from the King and Kingdome;* which, he conceives, is proved by the Grant of Subsidies to the King by the Parliament. The mistaking of this word (*Parliament*) hath beene mischievous in these times to this Land, and it is affectedly mistaken, which makes the sinne the greater, for the two Houses are not the Parliament, as before is declared, and at this time so to inculcate it, when all men know, that of the 120 Peeres of the Kingdome, who were Temporal Peeres before the Troubles, there are not now

4 pars, instit.
pag. 1.

above 30 in the Lords House, and in the House of Commons about 200 of the principall Gent. of the Kingdome left the House, and adhered to his Majestie, who is imprisoned by them, shewes no such candor as is to be desired.

It is true, that no Tallage can be layd upon the people of this Land, but by their consent in Parliament, as appeareth by the Lawes mentioned in the Margent; but you shall finde in *M. Seldens* learned Booke, called *Mare Clausum*, a number of Presidents in *Henry* the thirds time for Ship-money, justly condemned this Parliament, to the which his Majestie assented; and in truth, that Ship-money was condemned before, by the said two Statutes of 25. E. 1. & 34. E. 1. *de Tallagio non concedendo*. *Dan-gelt, Englitery*, and many grievous burthens were layd upon the people, and borne, untill that memorable Princes time. But I am of opinion, that the Common Law of the Land did alwayes restraine Kings from all Subsidies and Tallages, but by consent in Parliament; which doth appeare by *Magna Charta* the last chapter, where the Prelates, Lords, and Comminaltie gave the King the fifteenth part of their moveables. In truth it is no manner of consequence, because the King cannot take what he pleaseth of the subjects goods, that therefore they have a concurrent power in Parliament: there have beene many Parliaments, and no Subsidies granted; Parliaments may be without Subsidies, but Subsidies cannot be without Parliaments: of ancient time Parliaments rarely granted any, unlesse it were in
the

25 E. 1. confirmatio chartarum, cap. 6.
34 E. 1. cap. 1.
de Tallagio non concedendo.

the time of forraine Warres; and in my time, *Qu. Elizabeth* refused a Subsidie granted in Parliament, and in the Parliament of *1. Jac.* none were granted. The Gent. should make a conscience of blinding the people with such untrue colours, to the ruine of King and people.

A D. 3.

The Gent. affirmes, *That the sending Propositions to the King, and desiring his concurrence, is scarce worth an answer, for Subjects may humbly petition for that which is their strict right and propertie, &c.* The Propositions sent to *Newcastle*, are in print; wherein the two Houses are so farre from humbly petitioning, that they stile not themselves his Majesties Subjects, as appears by the Propositions.

That they have a strict right or propertie to any one of these Propositions, is a strange assertion, every one of them being against the Lawes now in force: Have the two Houses a strict right and propertie, to lay upon the people what Taxes they shall judge meet? To pardon all Treasons, &c. that is one of their Propositions. Have they a strict right and propertie to pardon themselves? and so for all the rest of their Propositions.

These Propositions have been Voted by both Houses, the Kings assent (they being drawne into Bills) makes them Acts of Parliament: Hath the King no right to assent or dis-assent?

C

Was

12 H. 7. 20.

1 Jac. cap. 1.

1 Car. cap. 7.

Was the sending but a Complement? All our Law-Bookes and Statutes speake otherwise. This Gent. and others, must give an account one time or other for such delusions put upon the people.

AD. 4.

The Gent. sayth, *They affirme not, that the Kings power is separated from his person, so as the two Spencers affirmed, &c.* His Majesties person is now at *Holnby* under their Guards; have they not severed his power from him, when by no power they have left him; hee can have two of his Chaplaines, who have not taken their Covenant, to attend him for the exercise of his Conscience?

15 Ed. 2. Ex-
ilium Hugonis
1 E. 3. c. 2.
Calvins case.
7 Pars, Re-
ports 11.

For the three Conclusions of the *Spencers*, doe not the two Houses act every of them? They say, his Majestie hath broken his Trust, touching the Government of his people: They have raysed Armies to take him, they have taken him, and imprisoned him; they governe themselves; they make Lawes, impose Taxes, make Judges, Sheriffes, and take upon them *omnia insignia summa potestatis*: Is not this to remove the King for misdemeanours, to reforme *per aspersè*, to governe in aide of him; the three Conclusions of the *Spencers*? Doe they thinke the good people of *England* are become stupid, and will not at length see these things?

The Gentleman saith, *They doe not separate his power from his Person, but distinguish it, &c.* His power is in his legall Writs, Courts, and Officers: when they counterfeite the Great Seale, and seale Writs with the same, make Judges themselves, Courts and Officers, by their owne Ordinances against his consent, declared under his true Great Seale of *England* (not by word of mouth, letters, or ministers onely) their Seale is obeyed, their owne Writs, their owne Judges, their own Courts, their owne Officers, and not the Kings: The time will come when such strange actions and discourfes will be lamented.

Plowd. 4. Eliz.
213. the Kings
power and his
Person are in-
divisible.

A D, 5.

The Gentleman goes on, *Wee take not from the King all power of pardoning Delinquents, wee onely say it is not proper to him* quarto modo, &c. What doe you meane by *quarto modo*? I am sure, *Omnis Rex Anglia, solus Rex & semper Rex* can do it, and none else; read the Bookes of the Law to this purpose collected by that reverend and learned Judge *Stanford*, from all antiquity to his time, who dyed in the last yeare of King *Philip* and Queene *Maries* Reigne, you shall finde this a truth undeniable; and this power was never questioned in any age in any Booke by any untill this time, that every thing is put to the question: You Gentlemen who professe the Law, and maintaine the partie against the King, returne at length, and bring not so much scandall upon the Law, (which

Stanfor. Pleas
99.
27 H. 8. c. 24.
Dier. 163.

preserves all) by publishing such incredible things.

1 Parq. Instit.
pag. 344.
Plowd. 3. Eliz.
236, 237.

We hold only what the Law holds, the Kings Prerogative and the Subjects Liberty are determined, and bounded, and admeasured by the written Law what they are; wee doe not hold the King to have any more power, neither doth His Majestie claime any other but what the Law gives him; the two Houses by the Law of this Land have no colour of power, either to make Delinquents, or pardon Delinquents, the King contradicting: (and the Army under Sir *Thomas Fairfax* (howbeit but Souldiers) doe now understand that to be Law, and doe now evidently see and assuredly know, that it is not an Ordinance of the two Houses, but an act of Parliament, made by the King, Lords and Commons that will secure them, and let this Army remember their executed fellow Souldiers) And the Law was alwayes so taken by all men untill these troubles, that have begot Monsters of opinions.

AD. 6.

The Gent. sayes, *The Parliament hath declared the King to be in no condition to governe, &c.*

There is no end of your distinctions, I and you professe the Law, shew me Law for your distinctions, or letter, syllable, or line, in any age in the Bookes of the Law, that the King may in one time be in no condition to govern, and yet have the habit of governing, and another time he may (*viz.*)

when

when the two Houses will suffer him: the Law saith thus, *Ubi lex non distinguit, non est distinguendum.*

Hec sayes, *The King is not barred from returning to His Parliament*, (as he calls the two Houses) hee knowes the contrary, the whole City knowes the contrary, *Nos jurisconsulii sumus sacerdotes*, (as *Iustinian* the Emperour hath it; in the first Booke of his *Institutions*) and therefore knowledge and truth should come from our lips: Worthy and ingenious men will remember, and reflect upon that passage of that good and wise man *Seneca*, *Non quaeritur, sed quaerendum*; follow not the rayes of the Lawyers of the House of Commons: God forgive them, I am sure the King will, if they be wise and seek it in time.

A D. 7.

The Gent. sayes, *Wee sweare that the King is our supreme Governour over all persons and in all causes, &c.*

Why hath he left out the word (*only*?) for the oath the Members now take, is, that King *Charles* is now the onely and supreme Governour in all causes, over all persons, and yet they keep their only Supreme Governour now in prison, and act now in Parliament by vertue of their Prisoners Writ, and by a concurrent power in this Parliament, and by their owne strict right and property, (as the Gent. affirmes in his Answer) These things agree well with their Oath, that the King is the onely Supreme Governour in all causes, over all persons;

5 Eliz. ca. 1.
Cawdreys case
5 pars, fol. 1.

This Oath is
allowed by the
Common Law
of the Land.

persons ; this Oath is taken now in the Parliament time, by all the Members of the House of Commons, and is required by the Law to bee taken in all Parliaments, otherwise they have no power, nor colour to meddle with the publike Affaires.

This Oath being taken in Parliament, that *the King is the onely and Supreme Governour in all causes*, then it followes in Parliament causes ; *over all persons*, then over the two Houses ; let them keep this Oath, and wee shall bee sure of peace in the Land : and good Lawyers ought to desire peace, both for the publike good and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent.sayes, *wee doe not sweare that the King is above all Law, nor above the safety of his people* ; neither doe wee so sweare, but His Majesty and wee will sweare the contrary, and have sworne, and have made good, and will by Gods grace make good our Oath to the world, that the King is not above the Law, nor above the safety of his people, the Law and the safety of his people are his safety, his Honour and his Strength.

A D. 8.

The Gent. concludes, *That Acts of Parliament are not formally binding, nor compleat without the Kings assent, yet the Houses have a virtuall power without the Kings particular assent, to doe things in order to publike Justice and Safety, (viz.) In setting up the Excise,*

Excise, in raising and maintaining of Armies, in taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loanes, Compositions, imprisoning the King, abolishing the Common prayer-Booke, selling the Churches Lands, &c. all these are in order to publike Justice and Safetie.

Mr. H. P. you are of my profession, I beseech you, for the good of your Countrey, for the Honour of our Science, perswade your selfe and others, as much as in you lyes, to beleieve and follow the monition and Councell of that memorable, reverend, and profoundly learned in the Laws and Customes of the Land, the Lord Coke, who writes as becomes a great and a learned Judge of the Law (a person much magnified by the two Houses) in these words: *Perruse over all Bookes, Records and Histories, and you shall finde a Principle in Law, a Rule in Reason, and a Tryall in Experience, that Treason doth ever produce fatall and finall destruction to the offender, and never attaines to the desired end (two incidents inseparable thereunto) and therefore let all men abandon it, as the poisonous bait of the Devill, and follow the Precept in holy Scripture, SERVE GOD, HONOUR THE KING, AND HAVE NO COMPANY WITH THE SEDITIONS.*

3 Pars, Instit
P. 36.

CONCLUSION.

I Say againe, that without an Act of Oblivion, a gracious generall Pardon from His Majesty, the Arreares of the Souldiers paid, a favorable regard had to tender Consciences, there will bee neither Truth nor Peace in this Land, nor any man secure of any thing he hath.

The End.
